

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the Family
Child Care License of Amy Staples

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Richard C. Luis on December 28, 2006. The matter was conducted by video conference, with the Judge appearing at the Office of Administrative Hearings in Minneapolis and the parties appearing in a video conference courtroom at the Pipestone County Court House in Pipestone, Minnesota.

Damain D. Sandy, Assistant Pipestone County Attorney, 114 North Hiawatha, P. O. Box 128, Pipestone, MN 56164, appeared on behalf of the Pipestone County Family Service Agency (Local Agency) and the Minnesota Department of Human Services (Department). Amy Staples (Licensee, Respondent), 420 Fourth Street SW, Pipestone, MN 56164, appeared on her own behalf. The record closed with the receipt of original exhibits on January 3, 2007.

STATEMENT OF ISSUE

Whether the temporary immediate suspension of the family child care license of Amy Staples was appropriate because of a lack of proper supervision for leaving her daycare children in the charge of her 12-year-old son when she left the daycare residence to purchase lunch at a local fast-food restaurant?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Amy Staples has been a licensed childcare provider since early 2004. She provides childcare services at her residence in Pipestone.

2. On November 16, 2006, Ms. Staples had three children in her care, one age three and two age one. Ms. Staples's 12-year-old son, B.B., was home from school that day because he was feeling sick.

3. B.B. recovered from his illness during the course of the morning, and expressed a desire to his mother for lunch from a nearby fast-food restaurant. His mother decided to purchase the fast food as a reward to B.B. for getting well.

4. Ms. Staples left the daycare residence, accompanied by another one of her own children, sometime after 11:30 a.m. to purchase the fast-food lunch. The fast-food restaurant is approximately 12.5 blocks from Ms. Staples's residence. Before leaving the daycare residence, Ms. Staples instructed B.B. to watch the three daycare children remaining in the house.

5. At approximately 11:50 a.m. on November 16, 2006, M.F., the mother of one of the Licensee's daycare children, arrived at the daycare residence to drop her own child off for afternoon daycare. Upon entering the house, M.F. found the daycare children sitting at the kitchen table. One was in a highchair, the other in a booster chair and the other seated in a regular kitchen chair. It appeared to M.F. that the children had been eating lunch and had finished with their eating.

6. M.F. did not see the Licensee in the kitchen. She called for the Licensee, did not get a response, and began to look around the house for Ms. Staples.

7. When M.F. entered the Licensee's living room, M.F. found the Licensee's son, B.B., watching television. When M.F. asked B.B. if the Licensee was home, B.B. replied that she was not, that she had gone out to get lunch and would be home in 10-15 minutes. M.F. remained at the daycare residence with the daycare children and her own daughter until Ms. Staples returned to the house. M.F. had been at the Licensee's residence for approximately ten minutes before the Licensee returned from the fast-food restaurant.

8. After the Licensee returned from the fast-food restaurant, she scolded B.B. for not supervising the children in her absence. Ms. Staples also told M.F. that she had not expected her, and was surprised to see M.F. and M.F.'s daughter.

9. After receiving a report of the incident described in the preceding Findings, the Pipestone County Family Service Agency investigated the incident and wrote to the Commissioner of Human Services, recommending an immediate suspension of the Family Daycare License of Amy J. Staples. The Local Agency noted in its recommendation that it "feels strongly there is risk of harm to children in the care of Amy Staples."^[1]

10. On November 22, 2006, the Commissioner issued an Order of Temporary Immediate Suspension of the Family Child Care License of Amy Staples. Ms. Staples filed a timely appeal, and this hearing process followed.

Based on the Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07.

2. The Notice of Hearing was proper and the Department has fulfilled all procedural requirements.

3. The Local Agency and the Department have established reasonable cause to believe that the Licensee's failure to supervise properly the children in care at her daycare facility on November 16, 2006, posed an imminent risk of harm to the health, safety or rights of three of her daycare children within the meaning of Minn. Stat. § 245A.07, subds. 2 and 2a.

4. It is appropriate to affirm the imposition of a temporary immediate suspension of the Family Child Care License of Amy Staples, and to continue that suspension until the issuance of a Final Order by the Commissioner of Human Services under Minn. Stat. § 245A.08.

Based on the Conclusions, and for the reasons noted in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Human Services AFFIRM the temporary immediate suspension of the Family Child Care License of Amy Staples.

Dated this 9th day of January, 2007

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Taped
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative

record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.^[2] Parties should contact the office of Cal Ludeman, Commissioner, Department of Human Services, PO Box 64941, St. Paul, MN 55164, 651-296-2701 to find out how to file exceptions. The Commissioner must issue his final order within 10 working days from the end of the exception period.^[3]

Pursuant to Minn. Stat. § 14.62, subd. 1 (2004), the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Administrative Law Judge believes that the Local Agency and the Department have demonstrated that reasonable cause exists to believe that the Licensee's actions posed an imminent risk of harm to the health or safety of persons served by her program.

The record establishes that Ms. Staples failed to supervise her daycare children on November 16, 2006, within the meaning of Minn. R. 9502.0365, subp. 5, which requires that children in care must be supervised by a caregiver. Minn. R. 9502.0315, subp. 29(a) defines "supervision" as a caregiver being within sight or hearing of infants, toddlers or preschool children at all times so that the caregiver is capable of intervening to protect the health and safety of the children. Under Minn. R. 9502.0315, subp. 6, "caregiver" is defined as the provider, substitute, helper or another adult giving care in the residence. (Emphasis supplied.)

Under the above-cited definition of "caregiver", Ms. Staples's 12-year-old son cannot qualify as a caregiver because he is not an adult. Ms. Staples relinquished supervision of her daycare children for a minimum of ten minutes when she left her daycare residence on November 16, 2006 to purchase fast food.

The Licensee presented no factual defense to the County's evidence that she left her daycare children unsupervised for a minimum of ten minutes on November 16, 2006. The Local Agency has established that her actions posed an imminent risk of harm to the health, safety and rights of her daycare children. In the absence of any defense to her actions of November 16, 2006, or of any mitigating evidence, it is reasonable to conclude that children in the care of Ms. Staples face a risk of endangerment to their health and safety until the Commissioner decides on any final sanction against her license under Minn. Stat. § 245A.08. A temporary immediate suspension of her Family Child Care License is appropriate in the interim.

R. C. L.

^[1] County's Ex. 2.

^[2] Minn. Stat. § 14.61. (Unless otherwise specified, all references to Minnesota Statutes are to the 2004 edition.)

^[3] Minn. Stat. § 245A.07, subd. 2a(b).